

DOCUMENT RESUME

02567 - [A1672666]

[Compensation for Work Performed after Expiration of Appointment]. B-186229. June 8, 1977. 3 pp.

Decision re: Timothy P. Connolly; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Forest Service.

Authority: 5 U.S.C. 5584 (Supp. V). B-149065 (1962). B-183850 (1976). B-18424 (1977). 52 Comp. Gen. 700. 55 Comp. Gen. 100. Department of Agriculture Personnel Manual, para. 213.3713.

Orris C. Huet, Authorized Certifying Officer, Department of Agriculture, requested a decision on a former temporary employee's claim for compensation for work performed after his appointment expired. By administrative error, he worked 15 days before agency discovered infraction and terminated him. He was a de facto employee and could be paid for services rendered in good faith. (Author/DJM)

Stephen Sorett
Civ. Pers.

2666
02567
DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-186229

DATE: June 8, 1977

MATTER OF: Timothy P. Connolly - Compensation for work
performed after expiration of appointment

DIGEST: Temporary employee of Department of
Agriculture worked 15 days beyond
his appointment limitation before
employing agency discovered the
infraction and terminated him. He
is de facto employee, and he may
be paid for services rendered
since they were performed in good
faith under color of authority.
B-149065, June 26, 1962, will no
longer be followed.

This action is in response to a request dated March 23,
1976; reference FI-3 OCH, from Orris C. Huet, an authorized
certifying officer of the Department of Agriculture, for an
advance decision as to whether a claim submitted by
Mr. Timothy P. Connolly for compensation for work performed
after expiration of his appointment may be certified for
payment.

Mr. Connolly was hired as a Forestry Aid by the Forest
Service, Department of Agriculture, Tonto National Forest, Mesa
Ranger District, on December 16, 1974, under a 180-day appoint-
ment not to exceed December 15, 1975. Because of an extended
fire season in the Tonto National Forest, Mr. Connolly's
appointment was changed to 220 days on August 3, 1975, in
accordance with the Department of Agriculture Personnel Manual,
Paragraph 213.3113. Due to administrative oversight on the
part of the Forest Service, Mr. Connolly was not terminated at
the end of his 220-day appointment on October 2, 1975. The
error was not discovered until October 20, 1975. Then, while
processing the Time and Attendance Reports for the pay period
covering September 28 through October 11, 1975, the National
Finance Center discovered that Mr. Connolly had worked beyond
his appointment limitation. Immediate action was taken to
terminate Mr. Connolly retroactive to October 2, 1975. However,
before he was terminated on October 20, 1975, Mr. Connolly had
worked an additional 15 days for a total of 129 hours and one

B-186229

holiday for which he has not been compensated and for which he now makes his claim.

The record indicates that the Mesa District Ranger, the Tonto National Forest Supervisor, and the Deputy Regional Forester, Administration, recommend compensating Mr. Connolly for the additional period since he worked this time in good faith and the failure to terminate him at the expiration of 220 days was due to administrative error and was not the fault of the employee.

We note that Form AD-350 dated December 16, 1974, and Form AD-350 dated August 3, 1975, which we presume were furnished Mr. Connolly, indicate the length of his appointment and the number of days remaining under his appointment under the captions "Appointment Limitations, Balance" (items 29 and 30 on each form, respectively). However, while balances of 180 days and 48 days were listed, neither form specifically states that his appointment shall expire on October 2, 1975. The record also indicates that the administrative office failed to list Mr. Connolly on its periodic notice of employees approaching expiration of appointment limitations.

Where an employee receives an overpayment of pay or allowance through administrative error and there is no fault on the part of the employee, our Office may consider the circumstances of such overpayment and, if appropriate, waive collection of the overpayment under the provisions of 5 U.S.C. § 5384 (Supp. V (1976)). In this case, however, Mr. Connolly has not received any compensation for the work period in question.

In B-149065, June 26, 1962, we held that an employee who rendered additional service beyond his 130-day limitation and prescribed compensation limit was considered as having served in a de facto status. We then applied the long standing rule that a de facto employee could retain pay received but could not be paid any unpaid compensation. However, we do not view this fact as requiring the denial of Mr. Connolly's claim. In this connection we held in James W. Jensen, B-183850, March 18, 1976, that, despite the lack of a valid appointment, a period of service rendered to the Government in good faith and under the color of authority was compensable. Therefore, we hereby hold that the principle in Jensen is equally applicable to

B-186229

cases where limited appointments are not terminated on time because of administrative error and there is no fault on the part of the employee. B-149065, June 26, 1962, will no longer be followed. See 52 Comp. Gen. 700 (1973), 55 id. 109 (1975).

In the instant case there is no evidence that Mr. Connolly had constructive or actual notice that his appointment was to expire on October 2, 1975. In view of this and since the administrative office failed to notify him of the impending expiration of his appointment, we hold that there was no fault on the part of Mr. Connolly that would preclude payment of his claim.

Persons who serve in good faith as de facto officers or employees may be paid compensation equal to the reasonable value of services rendered during such period of service. 52 Comp. Gen. 700, supra, 55 id. 109, supra; B-188424, March 22, 1977.

Accordingly, Mr. Connolly's claim for compensation for the reasonable value of service rendered after the expiration of his appointment may be certified for payment.

Deputy


Comptroller General
of the United States